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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 295

CHARLES C. DIGGS,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN AND BRIEF IN SUPPORT THEREOF

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THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner Charles C. Diggs prays for the issuance of a writ of certiorari to review the decisions of the Supreme Court of the State of Michigan in affirming, on May 18, 1948, the judgment of the Circuit Court for the County of Ingham in the State of Michigan and in denying, on June 29, 1948, petitioner's request for rehearing in connection with certain criminal proceedings.

I.

STATEMENT OF THE CASE

(Unless otherwise clearly shown by context, figures in parentheses refer to pages of the printed record)

Petitioner, jointly with one Logie, was convicted in the Circuit Court for Ingham County, Michigan, upon an information* charging them with conspiring corruptly to affect and influence the legislature of the State of Michigan with respect to House Bill No. 22, which related to the regulation and licensing of racing meets (302). This bill, after passing the State House of Representatives, was transmitted to the State Senate where it was referred to the Committee on State Affairs. At the time petitioner Diggs and his co-defendant Logie were State senators and members of this committee. Its chairman was Chester M. Howell. On Howell's motion all members of the State Affairs Committee voted indefinitely to postpone action on this bill (303).

At the trial Howell, the chief witness for the people, testified under a grant of immunity that he had been given $3,000 by one Constantine Daniels for the purpose of influencing votes on this bill. He stated that Daniels told him he wanted $1,000 of this amount to go to Logie and $250 to petitioner Diggs. Howell claimed that he paid Logie $500 on one occasion and $300 on another and gave Diggs $150, telling them that there would be more later. He admitted that he deliberately cheated both of them out of the balance of the money (303).

The proofs against petitioner were extremely weak, depending solely upon the testimony of the self-confessed

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*This charge was the outgrowth of an investigation by a One-Man Grand Jury such as was involved in *In re Oliver*, 333 U. S. 257.

cheat* and co-conspirator Howell. The entire proof against petitioner was Howell's statement that he asked petitioner on the floor of the Senate to kill the racing bill and he would get $250 (41), and that he later gave him $150 (48). Howell never claimed any further contact with petitioner or any further participation by petitioner in the scheme or that petitioner ever asked him about the matter. Howell admitted on cross-examination that he never told either Logie or petitioner of any action that the other was contributing toward the killing of the bill (94).

Petitioner himself under oath completely denied any part in the scheme or that he agreed to kill the bill or was paid any money by Howell to influence his vote (108-10).

The case was tried in the circuit court by a special prosecutor, Kim Sigler, for the people.** Throughout the entire trial, this special prosecutor persisted in a continuous, studied and calculated course of disparaging and belittling remarks directed against petitioner and his counsel as well as in a series of innuendos implying that they were withholding the truth from the jury. All of this was done for the sole purpose of prejudicing the jury against the accused and preventing a fair trial. This same special prosecutor had been extremely successful with such tactics in several other trials*** arising out of the same

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*Howell also admitted his participation in the conspiracy and that he had pleaded guilty to another indictment (95) on which he had not yet been sentenced (75).

**Now the Governor of the State of Michigan.

***Particularly *People v. DeLano*, 318 Mich. 557, cert. den. 334 U. S. 818, referred to *infra*.

grand jury investigations, and from which he received great publicity.*

The inevitable result of such misconduct by the prosecutor, sanctioned as it was by the trial court, was the denial of a fair hearing and the finding of a verdict of guilty by the jury (230). Petitioner was immediately sentenced to 4 to 5 years in the State prison (250).

Motion for new trial was timely filed (252) urging *in extenso* the prejudicial misconduct of the special prosecutor, but the motion was denied. On appeal to the Supreme Court of Michigan (the highest court of the state) these same objections, among others, were pressed upon that court (286-9), were considered by it, and overruled (303-4). Timely application for rehearing to that court again urging the same objections and the denial of due process and a fair hearing (313) was also denied (334).

On July 2, 1948, on petitioner's application, a stay of proceedings was granted by the state Supreme Court for a period of 30 days pending this application for writ of certiorari (335). Subsequently on July 27, 1948, this Court granted a further stay until at least September 27, 1948.

II.

QUESTIONS PRESENTED

A. Did the misconduct of the special prosecutor result in denial to petitioner of the fair hearing and due process of law commanded by the 14th amendment to the United States Constitution?

B. Was the criminal conduct charged in the information a crime under the laws of the State of Michigan?**

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*Mr. Sigler was subsequently elected Governor of the State of Michigan, and took office January 1, 1947.

**This point was raised on appeal to the state supreme court by assignment of error number 1 (286) but was completely ignored by that court.

III.

REASONS FOR ALLOWANCE OF THE WRIT

A. The state Supreme Court has considered and denied petitioner's claim to a fair hearing and due process of law under section 1 of the 14th amendment to the United States Constitution.

B. The state supreme court has decided herein a federal question of substance and its decision is not in accord with the decisions of this and other courts on the transgressions of a prosecutor resulting in denial of due process of law under that amendment.

C. The state supreme court has affirmed a conviction for a crime which does not exist under the laws of the State of Michigan.

D. The questions involved are of general public importance affecting fundamental rights in jury trials, particularly the right to protection against the overbearing conduct of the sovereign state's representative—the special prosecutor.

IV.

PRAYER

Wherefore, petitioner, Charles C. Diggs, prays that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of Michigan commanding the said court to certify and send to this court a full and complete transcript of the record and the proceedings of said court had in this cause numbered and entitled on its docket No. 43,270, The People of the State of Michigan, Plaintiff-Appellee v. Charles C. Diggs, Respondent and

Appellant, to the end that this cause may be reviewed and determined by this court and that the judgment of the said Supreme Court of Michigan be reversed and for such further relief as this court may deem proper.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of Michigan is reported in 321 Mich. 303.

The opinion of the trial court in denying the motion for new trial is unreported, but appears in the printed record, pp. 265-6.

II.

JURISDICTION

The jurisdiction of this court is invoked under section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C., Section 344), and under sections 1257(3) and 2101(c) of Title 28, U. S. C. A., Judiciary and Judicial Procedure, effective September 1, 1948.

III.

STATEMENT OF CASE

A summary statement of the case has already been made in the Petition for a Writ of Certiorari under heading I, which is hereby adopted and made a part of this brief.

IV.

SPECIFICATIONS OF ERROR AND SUMMARY OF ARGUMENT

A. The state supreme court erred in holding that the special prosecutor's misconduct throughout the trial did not deprive petitioner of a fair trial and due process of law guaranteed him by section 1 of the 14th Amendment to the United States Constitution.

B. The state supreme court erred in holding that the giving of a bribe and the taking of a bribe can constitute a conspiracy at common law, and that the acts charged against petitioner constituted a crime under the laws of the State of Michigan.

V.

ARGUMENT

A.

PETITIONER WAS CONVICTED WITHOUT A FAIR TRIAL AND DUE PROCESS OF LAW

The Constitution of the United States in amendments 5 and 14 expressly declares that no man shall be convicted without "due process of law." This has been repeatedly held to be tantamount to a "fair trial."

> *Adamson v. California*, 332 U. S. 46, 53;
> *Levine v. Oklahoma*, 322 U. S. 496, 605;
> *Betts v. Brady*, 316 U. S. 455, 462.

As stated by Justice Frankfurter in the *Adamson* case such due process requires that the proceedings accord with "those canons of decency and fairness which express the notions of justice of English-speaking peoples even towards those charged with the most heinous offenses" (332 U. S. 67-8).

What constitutes a "fair trial" and a compliance with those standards of "decency and fairness" cannot be defined beforehand but must be judged in the light of the entire proceedings in the then prevailing circumstances and the legal and social philosophy of the times. As said by Frankfurter J., in the *Adamson* case:

> "These standards of justice are not authoritatively formulated anywhere as though they were prescriptions in a pharmacopoeia." (332 U. S. 68.)

The guaranty thus provided is that every trial shall be conducted on fundamental principles of liberty and

justice. Woven into the very warp and woof of the due process philosophy is the principle of fair play.

Voight v. Webb (D. C. Wash., 1942) 47 F. Supp. 743.

Out of the multitudinous examples of what constitutes due process of law, there has crystallized by judicial exclusion and inclusion the principle that the hearing must be fair, that the accused be confronted with the evidence against him and that he be given an opportunity to defend;

In re Oliver, 333 U. S. 257,

and that he shall have, in the absence of intelligent waiver, representation by counsel.

In re Oliver, supra;
DeMeerleer v. Michigan, 329 U. S. 664.

Such representation must be real and not merely *pro forma;* it must be effective.

Powell v. Alabama, 287 U. S. 45;
Ex parte Kramer, 61 Nev. 174, app. dis. 316 U. S. 646.

Representation by incompetent counsel or the emasculation of such representation by a precalculated plan of the prosecution belittling and disparaging such counsel, in the presence of the jury, sanctioned by the court, is equally a denial of a fair trial. Degradation of defense counsel is in effect a prejudicial limitation of the rights of accused. As stated in *Powell v. Alabama,* 287 U. S. at p. 69:

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by or appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

That the conduct of a prosecutor may constitute State action within the purview of the 14th amendment is no longer open to doubt.

Mooney v. Holohan, 294 U. S. 103, 112.

Examination of the record in the present case will show that the conduct of the special prosecutor violated every principle of fair trial, fair play, and decency, as well as precluded a real and fair representation of petitioner by his counsel. This special prosecutor, who, incidentally, is now Governor of the State of Michigan, from the beginning of the trial, without provocation of any sort, made continuous prejudicial and derogatory remarks directed at the accused and their counsel in the presence of the jury, which remarks were calculated to and did bias the jurors in the consideration of the case and resulted in a miscarriage of justice. It was part of a plan conceived in advance of the trial and carried through to a successful conclusion as it had been in previous trials before. While some of the remarks were in themselves not particularly vicious yet the cumulative effect of all of those remarks together with the condoning attitude of the trial judge, the overbearing demeanor of the prosecutor and the humiliation of both the accused and their counsel undoubtedly resulted in an indelible effect upon the minds of the jury to petitioner's prejudice.

The state supreme court apparently proceeded on the theory that the accused were guilty and that, therefore, no

misconduct of the special prosecutor, no matter how reprehensible, should interfere with the affirmation of the conviction. This court has expressly stated in *Powell v. Alabama*, 287 U. S. 45, that no matter how guilty the defendants may be upon due inquiry they were, until convicted, presumed to be innocent and that it was "the duty of the court having their cases in charge to see that they were denied no incident of a fair trial."

We have gathered together some of the vicious and overbearing remarks and innuendos of the prosecutor in Appendix A to which we respectfully refer the court.

Both the Solicitor-General and the state supreme court have pointed out that in many instances no objections were made by counsel for petitioner or that some curative remark was made by the trial judge. While the opinion of that court holds the remarks to be not prejudicial, implicit in the ruling is the thought that objections were not made or that curative instructions were given. The state supreme court in reaching this conclusion committed grave error. The test is not the mechanical procedure of objection and cure, but the total effect upon the minds of the jury of the repeated and persistent misconduct of the prosecutor.

Ippolito v. U. S. (C. C. A. 6, 1940) 108 F. (2d) 668;

Pierce v. United States, (C. C. A. 6, 1936) 86 F. (2d) 949;

August v. United States, (C. C. A. 8, 1918) 257 Fed. 388.

Particularly in point is the leading case of *Berger v. United States,* 295 U. S. 78, where this court in no uncertain terms reversed a conviction because of the misconduct of the prosecutor.

The cases cited hold that the governing principle is what is the effect of the misconduct viewed as a whole upon the jury regardless of technical objections and attempted curative rulings by the trial judge. Equally controlling and fundamental in these cases is the nature of the case against the accused, whether it be weak or strong. What may not be prejudicial in the face of overwhelming proof of guilt may, in a weak case where the proofs are in serious dispute, sufficiently prejudice the jury to tip the balance against the accused. In the latter circumstance, prejudice must be assumed. We refer again to the case of *Berger v. United States, supra,* where this court based its reversal upon the very fact that the proof of guilt depending as it did upon the testimony of an accomplice, was extremely weak.

> "The court below said that the case against Berger was not strong; and from a careful examination of the record we agree. Indeed, the case against Berger, who was convicted only of conspiracy and not of any substantive offense as were the other defendants, we think may properly be characterized as weak—depending, as it did, upon the testimony of Katz, an accomplice with a long criminal record.
>
> In these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence. If the case against Berger had been strong, or, as some courts have said, the evidence of his guilt 'overwhelming,' a different conclusion might be reached. Compare *Fitter v. United States,* 258 Fed. 567, 573; *Johnson v. United States,* 215 Fed. 679, 685; *People v. Malkin,* 250 N. Y. 185, 201-202; 164 N. E. 900; *Iowa v. Roscum,* 119 Iowa 330, 333, 93 N. W. 295. Moreover, we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such

misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded. Compare *N. Y. Central R. Co. v. Johnson*, 279 U. S. 310, 316-318" (88-89).

As previously stated, *the only evidence against petitioner was the statement of the self-confessed cheat and co-conspirator Howell that he asked petitioner to kill the racing bill and he would get $250 and that he later gave him $150.* There was no claim of any further contact with petitioner or of any further participation by him in the scheme, or that petitioner ever asked him about the matter. *Petitioner denied completely under oath that he ever had any part in the scheme or that he agreed to kill the bill, or that he was paid any money to influence his vote.**

It would be almost impossible to conceive a weaker case for the prosecution. How can it be said then that the misconduct of the special prosecutor was not prejudicial to the accused? In such circumstances the probability of its prejudicial effect upon the jury was so inevitable that injury to the accused must be assumed.

The fact that Howell's testimony inculpating petitioner might have been sufficient to raise a question of fact for the jury to decide is not the answer. Whether or not this was so he was still entitled to a fair trial and con-

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*Contrast the proofs against Diggs with those against the co-defendant Logie. Howell said that he made a deal with Logie, went to Grand Rapids, got the $3,000 and came back on Monday, the 26th, met Logie, asked him to come to his room, which he did, gave him $500 (47); that he met Logie later at an EMTA outing, asked him to his room and gave him another $300 (53). Logie's presence at the outing was corroborated by pictures taken at the outing of him (Logie) and others (50). Logie had also paid Howell on two previous occasions to kill certain bills (96-7).

sideration by the jury of the evidence divorced from prejudicial misconduct of prosecutor.

Richardson v. United States, (C. C. A. 6, 1945) 150 Fed. (2d) 58, 64;
Cf. Powell v. Alabama, supra.

The state supreme court in its opinion affirming the conviction of petitioner unjustifiably relied upon the earlier case of *People v. DeLano,* 318 Mich. 557. That case furnished no precedent for the present case.

1. In the DeLano case the proofs incriminating the defendant were, unlike those in the instant case, quite strong. Williams, the lobbyist, there testified that he met Senator DeLano, had a talk with him about getting his bill out of the state affairs committee and that DeLano told him it would cost him $2,500. He talked with DeLano later in his room at the hotel and saw him every day. In the room he gave $2,000 in cash to DeLano who counted it out by sorting it on the bed like a deck of cards according to the denomination of the bills. DeLano then made a notation in a little black book which he took out of his vest pocket. Williams told him he was broke, so DeLano gave him back a $100.00, and consequently DeLano received only $1,900.00 of the $2,500. They saw each other daily 'til the end of the session, DeLano assuring Williams that he was doing the best he could to get the bill out of the committee. After the session was over, Williams and Dr. Grabow of Kalamazoo drove out to DeLano's farm. There DeLano told them that he "had been going through his little book" and found Williams owed him money and he wanted it. Unlike Diggs, who testified and denied the charge and testimony against him, ***DeLano did not take the stand in his own behalf.***

It might well be said, therefore, as the state supreme court did, that the misconduct of the prosecutor in that case could not have affected the result in the face of such complete incrimination of the defendant. But in the case at bar, petitioners' implication is by the most tenuous of threads—so slim, indeed, that anything less would have to be called nothing. The misconduct of the prosecutor, the disparaging, belittling, or insulting remarks directed against petitioner and his counsel and the innuendos implying concealment of the truth, could very well have overbalanced the otherwise delicate equilibrium of the proofs. In such circumstances, prejudice to the cause of petitioner must be assumed. *Berger v. United States, supra.*

2. It was also pointed out by the state supreme court in its opinion that, as in the *DeLano* case, the remarks made were only the usual occurrences in the heat of the trial. But we have carefully examined the remarks and conduct of special prosecutor in both cases* and find such a striking similarity in the manner and method used and in the remarks made as to lead to only one conclusion—this was a precalculated plan of the prosecutor to try his case by insulting and belittling his opponents and by implying to the jury that they were concealing the truth. It can not be said that here the prosecutor was acting under the stress and strain of the trial. His remarks were stock to be used over and over again. By way of illustration we have noted some of the remarks made by him in both cases in tabular form in Appendix B so that his premeditated course of misconduct becomes at once self-evident.

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*The same special prosecutor, of course, tried the present case after he tried the DeLano case.

The remarks of the prosecutor thus set forth in Appendices A and B are by no means exhaustive. They suffice to show however, that the special prosecutor, fortified by the favorable publicity and by what he "got away with" in the *DeLano* trial, carried the same plan of attack through petitioner's trial. He was overwhelmingly successful in his ridiculing and belittling of petitioner's counsel, implying their concealment and distortion of the truth and in prejudicing the jury against them. This misconduct on the part of the prosecutor was undoubtedly even more effective because of the lukewarm attitude of the trial court and the failure of both that court and the state supreme court to apply effective corrective measures.

It is especially to be noted as pointed out in *Berger v. United States, supra,* and by the state supreme court in *People v. Richardson,* 224 Mich. 66, that the prosecutor is a man of high standing in the community and that his remarks are of great influence upon the jury. This applies with even greater force to the present case because the peoplee here were represented by a *special* prosecutor *especially* chosen by a grand jury to unearth and punish wholesale crime. *Ipso facto,* he was a man of outstanding integrity and importance. His slightest suggestion was implicitly followed by the jury.

The trial court made little or no effort to control the prosecutor, but permitted him to run roughshod through the trial. Inevitably the jury must have felt that his behavior had the sanction of the court and not only was he always in the right, but defense counsel were always in the wrong. Jurors are ever watchful of every inclination of the trial judge and are greatly influenced thereby.

Bollenbach v. United States, 326 U. S. 607, 612.

We submit that the petitioner was denied the rudiments of a fair trial and due process of law in violation of the 14th amendment to the United States Constitution.

B.

THE GIVING OF A BRIBE AND THE TAKING OF A BRIBE DO NOT CONSTITUTE A CONSPIRACY UNDER THE LAWS OF THE STATE OF MICHIGAN

This point was presented to the state supreme court for its consideration by petitioner's assignment of error number (1) (286), but was not passed upon by that court. However, we believe it to be of such overwhelming importance to the rights of petitioner that this court may well consider it under the rule laid down in *Skuy v. United States* (C. C. A. 8, 1919), 261 Fed. 316 (syllabus), that "radical fault in the trial of a crime involving the liberty of defendant will be noticed and corrected by the reviewing court, although there be no proper objection, exception, or assignment."

Conspiracy law in the State of Michigan is based upon Section 505 of the Michigan Penal Code (section 28.773, Mich. Stat. Ann.) which provides:

> "Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony * * *."

The so-called "Wharton Rule" of conspiracy law has been adopted by the courts of the United States and of every state where the question has been raised. Under this rule there can be no conspiracy to commit a crime where a concert of action and plurality of agents are necessary elements of the substantive offense for the commission of which a conspiracy is alleged to have been formed. The conspiracy charged in the present case was that petitioner and others conspired corruptly to effect and influence legislation by giving and receiving of bribes. To such a charge the rule that there can be no conspiracy where a

concert of action is required is particularly applicable and many cases have so held.

United States v. Dietrich (C. C., 1904), 126 Fed. 664;
United States v. Sager (C. C. A. 2, 1931), 49 F. (2d) 725;
United States v. N. Y. C. R. R. Co. (C. C., 1906), 146 Fed. 298;
People v. Wettengel, 98 Colo. 193, 104 A. L. R. 1423;
State v. Law, 189 Iowa 910, 11 A. L. R. 194.

See also *Gebardi v. United States,* 287 U. S. 112.

The conviction charged against petitioner was neither a common law conspiracy nor a statutory conspiracy.

Analysis of section 505 of the Michigan Penal Code upon which the information against petitioner was based, undoubtedly strengthens our contention that the Wharton Rule must be applicable. That section, by its very terms, provides that any person who shall commit any indictable offense "for the punishment of which no provision is expressly made by any statute of this state" shall be guilty, etc. If then the acts of petitioner were such as to be punishable by any statute of the State of Michigan, *ipso facto* they could not be subjected to the provisions of section 505 and be termed a conspiracy. Petitioner, assuming for the moment the truth of the charge made against him, was guilty of receiving a bribe as a public officer, punishable by sections 2.61 and 28.312, Mich. Stat. Ann., and was guilty of aiding and assisting Howell in corrupting legislative action punishable by section 28.979 Mich. Stat. Ann., which makes all accessories liable as principals. Every act, therefore, of petitioner was expressly subjected to penalty

by other statutes of the State of Michigan, and therefore, could not be termed a conspiracy under section 505.

In re Resler, 115 Nebr. 335;
Davis v. People, 22 Colo. 1;
State v. Bell, 205 N. C. 225.

There was, therefore, at the time of the commission by petitioner of the acts charged against him no such crime under the laws of the State of Michigan as that alleged against him. Inasmuch then as there was no law defining the defense, his conviction was a denial of due process of law.

Stewart v. Michigan, 232 U. S. 665.

CONCLUSION

The state supreme court in affirming as it did petitioner's conviction has denied him the due process of law guaranteed by the 14th amendment to the United States Constitution.

We submit that the Writ should issue as prayed.

Respectfully submitted,

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APPENDIX "A"

"Mr. Sigler (special prosecutor): I take it you don't want them (the jury) to know what the facts are.

Mr. Black: I take exception to that remark of Mr. Sigler" (18).

"Mr. Sigler: Then why don't you sit down and let me go and we will be through" (24).

"Mr. Sigler: We are trying to get it and if you will leave us alone until we have covered it—

Mr. Black: Just a moment—

Mr. Sigler: If counsel is going to object every time we try to say something—I am trying to cover this honestly and fairly as I know how.

Mr. Black: I am not questioning counsel, I am asking for a ruling on the answer" (40).

"Mr. Golden: I am going to object to that.

Mr. Sigler: These lawyers don't like it that way, you see" (40).

"Mr. Sigler: I notice you are doing a lot of objecting to everything this morning" (45).

"Mr. Sigler: Perhaps some of us are not as smart as Mr. Black, and don't know how to prove these things.

Mr. Black: I take exception to that remark * * *" (48).

"Mr. Sigler: Won't you come down some time and tell us how to try lawsuits!" (51.)

"Mr. Sigler: These dramatics that my brother is putting in on this occasion * * *" (56).

"Mr. Sigler: Sure, you have been objecting to everything around here" (56).

'Mr. Sigler: Just a moment, my cantankerous brother • • •'' (58).

"Mr. Sigler: It is all objected to. What difference does it make? Suppose they serve soda pop and play cards?

The Court: Let's get along.

Mr. Sigler: They may have had doughnuts on one occasion" (69).

"Mr. Sigler: If you will try your lawsuit, there won't be any argument" (70).

"Mr. Sigler: Well, then in the future I am going to ask that you frame your questions accurately and not misleading.

Q. Now, Mr. Sigler, I will take my instructions—

Mr. Sigler: Address your remarks to the Court. I don't want you to talk to me. I don't want to listen to you.

Q. Now, your Honor, I don't know why I should be subjected to that kind of treatment here by Mr. Sigler.

Mr. Sigler: Because you are not fair with the witnesses, the reason, if you want to know, and because you don't state accurately • • •'' (80-81).

"Mr. Sigler: Why because the question is silly. That is the reason. It is so axiomatic, so self-evident" (82).

"Mr. Sigler: Counsel asks for all conversation he wants to know, and he doesn't want something about slot machines, brother" (70).

"And did you come by train to Greenbush Inn, or by auto?

A. By auto.

Mr. Sigler: Now what difference does that make? Suppose he went by bus, or rode a bicycle? What difference does it make? It seems that we are taking a lot of unnecessary time" (129).

"Mr. Sigler: I don't care what you ask me. You are taking a lot of unnecessary time here.

"The Court: Let's get along" (154).

"Mr. Sigler: Well, have you got through with your speech now, Mr. Black?" (172.)

"Mr. Sigler: Why, my brother, you should learn some day that you have a right to test the credibility of a witness. If you will look at your books, you will find that" (173).

"Mr. Sigler: We won't put it in that plain language. I will withdraw it so my brother won't be annoyed" (176).

"Mr. Sigler: Are you getting jittery this morning?" (177.)

APPENDIX "B"

People v. Diggs (petitioner's case)	*People v. DeLano**
1. Why, because the question is silly. That is the reason (82).	1. The question is so silly, your Honor (857).
2. Just a second. I submit this obstreperous manner of counsel is objectionable (65). Well, just a moment, my cantankerous brother * * * (58).	2. Just a second, if the Court please, my obstreperous brother here * * * (539).
3. Well, have you got through with your speech now, Mr. Black? (172.)	3. What are you doing, making a speech on the subject or asking a question? (454.)

*Figures in parentheses here refer to pages of printed record filed in the DeLano case with the state supreme court.

4. I take it you don't want them (the jury) to know what the facts are (18).

4. I don't suppose you do want any of the background in, but the People do (282). Do you want them to see some of the graft checks too? (603.)

5. Won't you c o m e down some time and tell us how to try lawsuits (51). Perhaps some of us are not as smart as Mr. Black, and don't know how to prove these things (48).

5. Well, you are not the only lawyer here, though. You may be surprised to know that (467).

6. What difference does it make? Suppose they serve soda pop and play cards? • • • They may have had doughnuts on one occasion (69).

6. Wait a minute, what difference does it make how he got his ice, whether they had n a p k i n s and served doughnuts (605).

7. Are you getting jittery this morning? • • • Is your conscience bothering you? (177.)

7. Well, you don't need to become excited or disturbed (463).

8. Then why don't you sit down and let me go and we will be through (24).

8. Then why don't you sit down and be patient, and be a nice boy, and we will tell you all about it (710).

9. I notice you are doing a lot of objecting to everything here this morning (45).

9. Wait until I am through and then object to your heart's content (486).

10. I don't care what you ask me. You are taking a lot of unnecessary time here. Counsel asks for all the conversation he wants to know, and he doesn't want something about slot machines, *brother* (70).

10. Well regardless of what you would like to do you are going to be interrupted every time I think your question is improper, *brother* (434).

11. Now, what difference does that make? Suppose he went by bus, or rode a bicycle? (129.)

11. That is objected to until he specifies qualifications for what—to drive an automobile, or help his wife wash d i s h e s, or what? (428.)